IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. NO.495/2004

Judgment delivered on: November 05,2007

Shri Rahul Gupta & Ors. ..... Appellant.
Through: Mr.S.P.Gupta, Advocate

versus

The Oriental Insurance Co.Ltd. & Ors. ..... Respondent
Through: Mr. Madhurendra Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

By way of this appeal, the appellant seeks to challenge

the impugned award dated. 7.4.2004 on the ground that the Tribunal has not granted adequate compensation towards the loss of the income due to the demise of the parents of the appellants.

Brief facts of the present appeal are that Smt.Veena Gupta aged 53 years along with her husband Shri Dharampal Gupta aged about 60 years, their son, Shri Rahul Gupta, aged about 29 years and daughter-in-law, Smt. Raj Shree Gupta at about 10.00 a.m. on 22.6.1997 met with an accident on G.T. Road, Muzaffar Nagar, Roorkee Road, near Falauda, P.S. Purkaji, Distt. Muzazzaffar Nagar, U.P. while travelling in a Maruti car bearing registration No. HR-51 B-1199, and were proceeding from Delhi to Pondha (Dehradun). A Tata Sumo Car bearing registration No. UP 15F 3787 came from opposite side being driven at a very fast speed, rashly and negligently by its driver and truck being driven by its driver in a rash and negligent manner came from the opposite side on extreme right side of the road and collided with the car bearing registration No. HR51 B1199. Due to forceful

impact the occupants of the car along with the car were thrown out of the road and Smt. Veena Gupta and her husband Shri. Dharam Pal Gupta succumbed to their injuries and died on the spot. A claim petition was filed on 27.3.1998 before the MACT and Award was made on 7.4.2004. Aggrieved with the said Award the present appellant/claimant has preferred this appeal.

Mr.S.P. Gupta, counsel for the appellants contends that the Tribunal while computing the compensation has not taken into consideration the financial loss to the family and to the estate and has merely granted compensation of Rs.2 lacs on account of loss of love and affection, motherly guidance, support and encouragement. In support of his argument counsel for the appellants has placed reliance on the judgment of the Supreme Court reported in **Lata Wadhwa & Ors. Vs. State of Bihar & Ors.** reported in **2001 ACJ 1735**.

Mr.Madhurendra Kumar, counsel for the respondent on the other hand contends that since the deceased was a housewife and the appellant was not financially dependent upon her

therefore, there was no loss to the estate and consequently no loss to the appellants and, therefore, due to this reason the Tribunal has declined to grant any amount for the loss of estate, after the demise of Smt. Veena Gupta.

I have heard learned counsel for the parties at considerable length and have perused the record. The Tribunal has taken into consideration the observations of the Supreme Court made in **Lata Wadhwa's case (Supra)** and based on the same has estimated the value of the services rendered @ 3,000/- per month. After placing reliance on the said judgment the Tribunal came to the conclusion that the estimated value of the services rendered by a housewife could be safely applied to the facts of the present case. Surprisingly, the Tribunal ultimately did not grant any compensation for the loss of estate to the appellants on the ground that the appellants were not financially dependent on the deceased. The Tribunal, however, granted a total compensation of Rs.2 lacs to the appellants for the loss of love and affection, motherly guidance and support, besides

considering other factors, to the appellants due to the demise of their mother.

Although, I do not feel inclined to interfere with the impugned award so far as the grant of compensation of Rs.2 lac is awarded in favour of the appellants under differnet heads, yet, I feel the approach of the Tribunal is totally erroneous and illegal so far as the same is concerned in relation to denial of amount of compensation towards the loss of estate on the ground that the appellants were not monetarily or financially dependent upon the deceased. The income of the deceased as a housewife, after placing reliance on the judgment of **Lata Wadhwa's case (Supra)**, was to be estimated in monetary terms and once reaching to that conclusion, the Tribunal ought not to have debarred the appellants from the loss of the estate due to the demise of the mother. The Tribunal has held the income of the deceased @3,000/- per month. In the present case there is an estimation of the value of the services being rendered by the housewife and therefore, I do not consider it proper to deduct

1/3rd expenses from the said estimated value of services. The age of the deceased was 53 years at the time of her death and the appropriate multiplier applicable to 52 to 55 years is 11 and applying the multiplier of 11 as envisaged in Second Schedule of the Motor Vehicles Act, the loss to the estate of the deceased would come to Rs.3,96,000/- (3,000x12x11). The respondent insurance company is thus directed to pay a sum of Rs.3,96,000/- @6% per annum from the date of filing of the petition till realisation.

With the above directions, the award passed by the Tribunal so far as the same relates to the death of Smt. Veena Gupta is modified to that extent.

The matter is remitted back to the Tribunal for carrying out the said modification and giving necessary directions for the release of the amount in favour of the appellants. Since the recovery rights have already been granted to the respondent insurance company, therefore, for the enhanced amount also, the respondent shall have recovery rights to recover the said amount

from the owner of the said offending vehicle.

With these directions the present appeal stands disposed of.

The parties are directed to appear before the Tribunal on 17.1.2008.

November 05, 2007 **KAILASH GAMBHIR J.**
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